

INDIANA RULES FOR ADMISSION TO
THE BAR
AND THE
DISCIPLINE OF ATTORNEYS

Rule 23

Section 27. Protection of Clients' Interests.

Whenever an attorney has been disbarred or suspended and has not fully complied with the provisions of Section 26 above, or if an attorney has disappeared or died or is otherwise unable to comply with said section, the judge of the circuit court of the county in which said attorney maintained a practice shall, upon proper proof of such facts, appoint an attorney or attorneys to inventory the files of said attorney and take such action as may be appropriate to protect the interests of said attorney and his or her clients.

Any attorney so appointed shall not disclose any information contained in any such files without the consent of the client to whom such file relates, except as necessary to carry out the order of the court which appointed the attorney.

Attorney Surrogates

(a) Definitions:

“Attorney Surrogate” means a member of the bar of this State, in good standing, who has been designated by a lawyer under this section as an attorney surrogate or has been appointed by a court of competent jurisdiction to act as an attorney surrogate for a lawyer.

“Court of competent jurisdiction” means a court of general jurisdiction in the county in which a lawyer maintains or has maintained a principal office.

“Disabled” means that a lawyer has a physical or mental condition resulting from accident, injury, disease, chemical dependency, mental health problems or age that significantly impairs his/her ability to practice law.

“Lawyer” means a member of the bar of this State who is engaged in the private practice of law in this State. For purposes of the attorney surrogate section of these rules, however,

the term “lawyer” shall not include a lawyer (a) whose sole employment is by an organization that is not engaged in the private practice of law, or (b) who is engaged with one or more other lawyers in the private practice of law pursuant to (i) Ind. Admission and Discipline Rule 27 or (ii) articles of partnership filed with the office of the Indiana Secretary of State.

(b) Designation of Attorney Surrogate

At the time of completing the annual registration required by Ind. Admission and Discipline Rule 23 Section 21 (D), a lawyer shall designate on the annual registration form provided by the Clerk of the Supreme Court the name, office address and residence address of the attorney surrogate. A lawyer designated as an attorney surrogate shall evidence acceptance of the designation by a writing, which shall confirm that satisfactory arrangements have been made for compensation for the performance of the attorney surrogate’s duties. The designation of an attorney surrogate shall remain in effect until revoked by either the attorney surrogate or the lawyer designating the attorney surrogate. The lawyer who designates the attorney surrogate shall notify the Clerk of the Supreme Court of any change of attorney surrogate within thirty (30) days of such change. The Clerk shall keep a list of attorney surrogates and their addresses.

A lawyer who is unable to secure an attorney surrogate may designate on the annual registration form “senior judge to be appointed by court” as the lawyer’s attorney surrogate.

Any lawyer who fails to designate an attorney surrogate as required by this subsection shall be subject to an order of suspension from the practice of law in this State and shall be subject to sanctions for contempt of this Court in the event he or she thereafter engages in the practice of law in this State.

(c) Role of Attorney Surrogate

1) Upon notice that a lawyer has:

- (a) died;
- (b) disappeared;
- (c) become disabled; or
- (d) been disbarred or suspended and has not fully complied with the provisions of Ind. Admission and Discipline Rule 23, Section 26

any interested person or the designated attorney surrogate may file in a court of competent jurisdiction a verified petition (1) informing the court of the occurrence and (2) requesting appointment of an attorney surrogate. If no effective attorney surrogate designation has been made by the lawyer, any interested party (including a local bar association) may file the verified petition and request that the court appoint an attorney surrogate. A copy of the verified petition shall be served upon the lawyer at the address on file with the clerk of the Supreme Court of Indiana or, in the event the lawyer has died, upon the personal representative, if one has been appointed. Upon the filing of the verified petition, the court shall, after notice and opportunity to be heard (which in no event shall be longer than ten (10) days from the date of service of the petition), determine whether there is an occurrence under (a), (b), (c) or (d), and an attorney surrogate needs to be appointed to act as custodian of the law practice. If the court finds that an attorney surrogate should be appointed then the court shall appoint either the designated attorney surrogate or a suitable member of the bar in this State in good standing as attorney surrogate.

2) Upon such appointment, the attorney surrogate may:

- (a) take possession of and examine the files and records of the law practice, and obtain information as to any pending matters which may require attention;
- (b) notify persons and entities who appear to be clients of the lawyer that it may be in their best interest to obtain other legal counsel;
- (c) apply for extensions of time pending employment of other counsel by the client;
- (d) file notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;
- (e) give notice to appropriate persons and entities who may be affected, other than clients, that the attorney surrogate has been appointed;
- (f) arrange for the surrender or delivery of clients' papers or property;
- (g) as approved by the court, take possession of all trust accounts subject to Ind. Prof. Cond. R. 1.15(a), and take all appropriate actions with respect to such accounts;
- (h) may deliver the file to the client; make referrals to substitute counsel with the agreement of the client; or accept representation of the client with the agreement of the client; and

(i) do such other acts as the court may direct to carry out the purposes of this section.

(d) Jurisdiction of Court

A court of competent jurisdiction that has granted a verified petition for appointment under this section shall have jurisdiction over the files, records and property of clients of the lawyer and may make orders necessary or appropriate to protect the interests of the lawyer, the clients of the lawyer and the public. The court shall also have jurisdiction over closed files of the clients of the lawyer and may make appropriate orders regarding those files including, but not limited to, destruction of the same.

(e) Time Limitations Suspended.

Upon the granting of a verified petition for appointment under this section, aAny applicable statute of limitations, deadline, time limit or return date for a filing as it relates to the lawyer's clients (except as to a response to a request for temporary emergency relief) shall be extended automatically for a period of 120 days from the date of the filing of a verified petition for appointment.

(f) Applicability of Attorney-Client Rules.

Persons examining the files and records of the law practice of the lawyer pursuant to this section shall observe the attorney-client confidentiality requirements set out in Ind. Professional Conduct Rule 1.6 and otherwise may make disclosures in camera to the court only to the extent necessary to carry out the purposes of this section. The attorney-client privilege shall apply to communications by or to the attorney surrogate to the same extent as it would have applied to communications by or to the lawyer. However, the attorney surrogate relationship does not create an attorney/client relationship between the attorney surrogate and the client of the lawyer.

(g) Final Report of Attorney Surrogate; Petition for Compensation; Court Approval.

When the purposes of this section have been accomplished with respect to the law practice of the lawyer, the attorney surrogate shall file with the court a final report and an accounting of all funds and property coming into the custody of the attorney surrogate.

The attorney surrogate may also file with the court a petition for fees and expenses in compensation for performance of the attorney surrogate's duties. However, an attorney surrogate who was designated by the lawyer is not required to petition the court for approval of fees and expenses. Notice of the filing of the final report and accounting and a copy of any petition for fees and expenses shall be served as directed by the court. Upon approval of the final report and accounting, the court shall enter a final order to that effect and discharging the attorney surrogate from further duties. Where applicable, the court shall also enter an order fixing the amount of fees and expenses allowed to the attorney surrogate. The amount of fees and expenses allowed shall be a judgment against the lawyer or the estate of the lawyer. The judgment is a lien upon all assets of the lawyer (except trust funds) retroactive to the date of filing of the verified petition for appointment under this section. The judgment lien is subordinate to nonpossessory liens and security interests created prior to its taking effect and may be foreclosed upon in the manner prescribed by law.

(h) Immunity

Absent intentional wrongdoing, an attorney surrogate shall be immune from civil suit for damages for all actions and omissions while acting as an attorney surrogate under this section.
